

THE ALTERNATIVES

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ADR OFFICE HONORS DISTRICT COURT VOLUNTEERS

By: Jean Whyte

The District Court of Maryland's Alternative Dispute Resolution (ADR) Office has experienced a tremendous amount of growth and success during 2003 and the first half of 2004. The ADR Office, operating under the Office of the Chief Judge, administers ADR Programs for the District Court of Maryland statewide. The programs are currently assisting litigants in seventeen counties and Baltimore City. During the first quarter of 2004, 66 percent of cases referred to ADR on the day of trial were settled.

To show its appreciation, the ADR Office recently hosted an ADR



Chief Judge James N. Vaughan presents the ADR 2003 Outstanding Volunteer of the Year Award to Jerry Rainville at the ADR Recognition Event, May 25, 2004.

Photo By: Dan Clark

Volunteer Recognition Event in May 2004. District Court ADR volunteers statewide gathered together in Ellicott City to receive recognition for the valuable services they provided to the District Court of Maryland ADR Programs. Jerry Rain-

ville, an ADR volunteer in Anne Arundel County was awarded the distinction of "2003 Volunteer of the Year" for his outstanding contributions to the District Court of Maryland ADR Program. Mr. Rainville
See ADR, page 2

MESSAGE FROM THE DIRECTOR

After a brief hiatus, *The Alternatives*, the newsletter of the Alternative Dispute Resolution (ADR) Office of the District Court of Maryland, is back in publication.

Perhaps, the new format of the newsletter caught your eye. The focus of this edition and future editions will be on ADR as a profession, announcements, items of

general interest and news on events and training sessions for volunteers.

Of importance, since our last publication, is the
See Message from Director,
page 2



Director of ADR Programs,
Alice Rentschler

Photo by: Dan Clark

Message from Director (Cont. from Page 1)

ongoing recognition of District Court of Maryland ADR volunteers. This past May, volunteers were thanked for their efforts with a statewide recognition event. Chief Judge Vaughan was on hand to show his appreciation and help distribute awards. For the second year in a row, a volunteer of the year was chosen. This great honor went to Jerry Rainville from Anne Arundel County. In addition, those

volunteers with 20 or more hours for the calendar year of 2003 were given additional kudos for their efforts. You can read more about this event in the article on page 1.

This is an exciting time to be involved with alternative dispute resolution in the District Court of Maryland. The Court's ADR programs continue to grow, the number of volunteers continues to increase, and the number of cases resolved continues to rise.

The staff of the ADR Office thanks all volunteers, court personnel, judges, attorneys, community mediation centers and others who continue to contribute to the success of these programs. By working together we have developed into one of the state's largest ADR providers with some of the highest quality volunteers. We couldn't do it without you!

—With Sincere Appreciation, Alice Rentschler



Volunteers at the ADR Recognition Event on May 25, 2004.

Photo By: Dan Clark

ADR (Cont. from Page 1)

has participated in the ADR Program for four years and the ADR Office welcomed the opportunity to highlight his achievements.

The success enjoyed by the District Court's ADR programs is directly attributable to its skilled and dedicated pool of volunteers. The District Court benefits from the services of 289 ADR Volunteers located across the state. The ADR Office is pleased to announce that 120 individu-

als have joined the ADR Program as volunteers since the beginning of this year, and interest in the Program continues to rise. In 2003, District Court ADR Volunteers donated over 4400 hours to the ADR Program, and the ADR Office anticipates that figure will likely be exceeded by the end of 2004. The ADR Office is indebted to its volunteers for their hard work and devotion to assisting Maryland citizens with their legal disputes.

The ADR Office anticipates many exciting and

challenging advancements during the latter part of 2004 and beyond. The knowledge, use, and understanding of ADR in the context of District Court cases is constantly evolving. In addition to bolstering existing ADR programs, the ADR Office seeks to expand its services to better serve the citizens of Maryland. The ADR Office would like to thank all who have given their support to the ADR Programs of the District Court of Maryland.

Jean Whyte is the ADR Program Development Coordinator

ADR Website – Coming Soon!!

By: Cindy Faucette

Many of you have asked "Am I on the volunteer schedule this week (or even today)?" Wouldn't it be nice to be able to go "on-line" and check the schedule yourself? Well, that is what the ADR office is working on.

In the near future, the ADR office plans to offer a specific ADR website. The website will be divided into two sections – one for the general public and one specifically for our ADR volunteers.

The public site is being designed to educate the public about ADR processes and available programs. There will be a link to the mediation brochure that explains mediation and how it can be beneficial in resolving disputes.

The volunteer site is being designed with you in mind. The site will be "password protected" to insure our volunteer's privacy. This private site will allow each of you to access the schedule to see when you have "signed-up" to facilitate or mediate. The site will also list the ADR programs training schedule, current events and will provide a calendar of events. Also, you will be able to access "The Alternatives" newsletters as well as any District Court of Maryland ADR forms that you may need. The website address will be provided to each of you as soon as it becomes available. This site will be available to all volunteers who have internet access.

Cindy Faucette is the ADR Regional Coordinator

Peace Orders in the District Court

By: Andrea Terry

From July 2002 to June 2003, more than thirty-six thousand peace and protective order petitions were filed in the District Court of Maryland. With the implementation of the "24/7" legislation on December 18, 2003, which allows District Court commissioners to issue interim peace orders when the District Court Clerk's Office for that county is closed, the number of petitions filed continues to increase. In response, more Districts are starting to mediate certain peace orders. At the July 2004 meeting, the District Court Administrative Judges committee voted in favor of a motion prohibiting all mediation involvement in domestic violence cases. The committee further prohibited mediation in any peace order case involving a weapon or recent violence, until the ADR committee develops a policy concerning such cases. The ADR committee discussed this issue at its August meeting and will discuss it further at its next meeting in October 2004.

The peace order statute permits a judge to refer parties to mediation if "the parties are amenable" (MD. CODE ANN.,

Courts and Judicial Proceedings § 3-1505(d)(v)). Ideally, this means that both petitioner and respondent will have appeared before the court at either the temporary, or more likely the final hearing phase, to express their mutual consent to mediate. The statute expressly permits a mediation referral at the final hearing phase. However, if there is quick service of an interim order issued by a commissioner, it is possible to have both parties appear at the temporary hearing. Therefore, judges may be able to get the parties' consent earlier in the process, and can either issue relief with an exception for the parties to have contact to mediate, or postpone the temporary hearing for up to thirty days for the parties to mediate.

Because some peace order petitions may not be appropriate for mediation, it is important to have the petitions reviewed for information such as the level of violence, threats, or allegations of weapon use, medical treatment sought by the petitioner, and the criminal history of the respondent, in addition to the history of violence or filing of past complaints between each other. Such petition review would happen preferably before the parties are in court

court together. The judge will also have the opportunity to assess the parties' behavior and interaction when they are in court. There is no fail-safe method to determine whether parties may become violent during a closed meeting with one another. Therefore, screening criteria is being developed by the ADR committee to determine whether a peace order should be referred to mediation.

To assist volunteers who mediate peace orders, the District Court ADR Office developed and presented a peace order training class. Volunteers who had at least one year of mediation experience were invited to attend the peace order training. The purpose of the training was to provide substantive and procedural information about the peace order process, and when and how mediation might fit into the process. The training also provided information about various case disposition processes, agreement writing, and suggestions for what to look for in determining whether the matter was appropriate to mediate. Based on very positive feedback from this year's participants, a revised and expanded version of the training will be offered each spring to any district upon request.

Andrea Terry is the ADR Quality Assurance Manager

What do ADR Volunteers need to know about Peace Orders in the District Court of Maryland?

- ADR Volunteers need additional training in order to handle Peace Order mediations.
- If an ADR Volunteer does not feel comfortable in mediating a Peace Order case, the volunteer must return the case back to the Judge for further disposition.

ADR OFFICE IS RESTRUCTURED

By: Andrea Terry

In response to the continued growth of alternative dispute resolution (ADR) in the District Court of Maryland, the Director of ADR Programs working with Chief Judge Vaughan restructured the District Court ADR Office in early 2004. The changes include re-aligning ADR staff duties, focusing on the volunteer application process, offering additional training opportunities and creating a new ADR judicial committee. The goal of the restructuring is to make better use of current resources and bring additional talent, organization and improvement to the ADR programs in the District Court statewide. The reorganization does not affect the relationship between the District Court of Maryland ADR Office and MACRO. These two offices will continue to

work together on statewide initiatives.

ADR Staff

In addition to a Regional ADR Coordinator who administers programs in Baltimore, Carroll and Howard Counties, and an ADR Liaison operating in Montgomery County, duties were re-aligned to focus on statewide consistency of programs and policies. The ADR Office staff now includes an ADR Volunteer Coordinator, an ADR Program Development Coordinator, and an ADR Quality Assurance Manager. These three positions serve the District Court's ADR programs across the state.

Volunteer Application Process

When a trained mediator or facilitator volunteers with the District Court of Maryland, he/she agrees in his/her application to abide by the Maryland Model

Standards of Conduct for ADR Practitioners, and the ADR process definitions and training requirements set forth in Title 17 of the Maryland Rules. Further, the volunteer agrees to participate in monitoring and feedback processes as developed by the District Court of Maryland ADR Office.

Part of the function of the re-created ADR staff positions is to help ensure that all volunteers have a working knowledge of the above referenced standards and definitions, and to more efficiently implement the monitoring and feedback processes.

Having close to three hundred volunteer practitioners, the District Court of Maryland is one of the largest ADR service providers in the State. Many of the ADR services are offered on the day a litigant appears in the court—See **ADR Office Restructured**, page 5

Announcements:

Prince George's County -

The Prince George's County program has experienced significant growth this year. Beginning September 1, 2004, the Day of Trial Program in Prince George's County will be expanding from two days a week to five days a week. The ADR Office would like to thank the Honorable Thomas Love for his volunteer recruiting efforts.

Anne Arundel County -

As of this summer, the District Court has begun to show a five minute video on mediation to small claims litigants. The video is shown in the courtroom before the docket starts to educate litigants about the mediation process. Please be sure to view the video the next time you volunteer in Annapolis.

Howard County—

In the District Court of Maryland for Howard County, for the first and second quarters of 2004, a total of 46 out of 75 cases settled, which equates to a 61 percent success rate.

See Announcements, Page 5

Introducing: Colin William Athey

Baby Stats:

Born: June 22, 2004

Time: 2:32 a.m.

Weight: 8 lbs., 6.6 ozs.

Length: 20 inches

Proud Parents:

Maureen Denihan*

& Joe Athey



* Maureen Denihan is the Coordinator of ADR Volunteers

Elderly Care & Estate Planning: The ADR Option

By: Jean Whyte

As the baby-boom generation begins to age, the United States' elderly population is predicted to increase rapidly during the next several decades. The AARP estimates that senior citizens currently comprise almost one-fifth of the nation's population. Data from the Congressional Budget Office published this year anticipates that this demographic will double in number by year 2040. Several studies and reports have recently highlighted the importance of addressing this shift in American society. Families privately struggle with hard choices as they attempt to navigate the unfamiliar and uncomfortable territory of elderly care and estate planning. Does alternative

dispute resolution (ADR) play a role in the important yet conflict-ridden area of elderly care and estate planning?

To minimize the conflicts that may surface and fester in elderly care and estate planning issues, the legal community is looking to options outside of litigation. At least one of these options is ADR. The introduction of ADR into the elderly care and estate planning process primarily occurs in one of three ways; a legal document provides for the use of ADR, the parties or their attorneys elect to participate in ADR, or a court with proper jurisdiction refers the dispute to ADR.

ADR Clauses

At present, few testamentary instruments or power of attorney documents contemplate ADR. However, some forward-thinking attorneys

and individuals acquainted with ADR are beginning to add ADR clauses to their trust, will, and power of attorney documents.

At the client's request or on the advice of an attorney, clauses can be included in these types of documents stating that ADR is the method by which all disputes are to be handled. To reduce challenges to the instrument's ADR clause, it has been suggested by some estate planning attorneys that parties include language akin to an *in terrorem* clause sometimes found in testamentary documents. The clause would compel any beneficiary or stakeholder to accept ADR as the method to handle

See *Elder Care and Estate Planning*, page 6

ADR Office Restructured

(Cont. from Page 4)

house for trial. It is important that the ADR service be a quality alternative since it is offered in lieu of the litigant's constitutional right to trial. All litigants keep their right to trial should they decide not to participate in ADR or participate in ADR and not reach an agreement.

The new ADR Office reorganization is designed to enable the volunteer coordinator, program development coordinator

and quality assurance manager to work together in helping volunteers continue their professional development, and to help ensure a good and consistent experience for the litigants

Training Opportunities

Towards that end, the District Court offered extensive training opportunities to its volunteers this fiscal year. The Judicial Training Center staff presented Diversity Workshops in Anne Arundel, Baltimore, Harford and Howard Counties. Four eight-hour settlement conference facilitation workshops were offered

in Anne Arundel, Prince Georges, Carroll and Howard Counties. In districts where peace orders are mediated, the ADR Office presented a training to help volunteers understand the procedural and substantive differences between peace orders and other civil matters. Volunteers with one or more year of experience and meeting other criteria were invited to this workshop. In the fall of 2004, the ADR Office will offer

See *ADR Office Restructured*, page 7

Announcements:

(Cont. from Page 4)

Carroll County—

A Special Set Case Management Process for Pre-Trial Referral to ADR (Facilitation) was developed in July 2004 by Jean Whyte, ADR Program Development Coordinator and Cindy Faucette, Regional ADR Coordinator. The process was designed to help manage the case flow for special set cases that have been referred by Judge JoAnn Ellinghaus-Jones and Judge Marc Rasinsky to ADR.

Baltimore County—

After meeting with Judge Alexandra Williams and the ADR staff in mid-May, the number of cases that are now being referred to ADR has increased. Now, if a case has been requested by the parties to be "Special Set" or if the estimated time for trial exceeds two hours, the case is being referred for mediation. If all parties agree to mediation, the case is referred to the Office of Administrative Hearings in Hunt Valley, Maryland, for mediation. If the case does not settle, the case is then set in for a trial date by the Special Set Clerk.

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Elder Care and Estate Planning (Cont. from page 5)

Disputes concerning assets whether passing under the will or not. If a party rejected the ADR clause, that party would be treated under the law as if he or she had predeceased the testator or trustor.

Self Referral to ADR

The second way in which ADR can feature prominently in elderly care and estate planning is if the parties select ADR as a means for resolving their disputes. Whether to employ ADR in an elderly care or estate planning dispute depends on several factors. ADR is often beneficial to disputants when the parties will continue in an ongoing relationship after the elderly care and estate planning matters are finalized. ADR also lends itself better to the emotional qualities attached to disputes over elderly care and estate planning. Confidentiality is often a central interest for parties in these kinds of situations. Most families would prefer to keep discussions involving assets and relationships a private affair. Similar to other advantages characteristic of ADR, parties can save time, money, and receive relief unavailable through litigation.

Court Referrals to ADR

The third possibility for ADR's emergence in the elderly care and estate planning sphere can occur if the court refers a dispute

to ADR. Courts in different parts of the country have already independently established programs that mediate estate planning disputes. Court programs currently exist in Texas, Florida, California, Georgia, Oregon, and Hawaii. Maryland has also recently begun to create ADR programs to refer estate planning disputes to ADR. This year, the Orphans Court in Baltimore City is preparing to launch a pilot ADR program specifically designed to handle estate planning disputes. After completing the requisite training courses earlier this year, an approved list of ADR practitioners have been scheduled for orientation in August 2004. The project hopes to start referring cases in September 2004. Baltimore County and Wicomico County have submitted grant proposals to receive funding for an estate planning ADR program in those areas. Montgomery County and Harford County are also actively referring estate planning disputes to ADR on an informal basis as an adjunct to their current ADR referral programs.

However, many experts in the estate planning and elderly law field point out that ADR may not offer the best method for resolving these types of disputes. For example, if a power imbalance exists between the disputants, ADR may be inappropriate. Grief connected with the loss of

a family member may cloud a disputant's judgment, and possibly result in poor decision-making during an ADR process. If elderly care is at issue, the elderly person may lack the capacity to adequately participate in the ADR process. Another important consideration arises when the interests of minors and unborn



persons are involved and unable to appropriately represent their interests.

Clearly, ADR's prominence in the field of elderly care and estate planning continues to escalate. Elderly care and estate planning disputes are usually complex and emotionally charged. In some instances, ADR may provide relief to those navigating this often unfamiliar territory. Maryland has begun to take an active role in promoting the use of ADR in this context, and hopefully all parties to these types of disputes will achieve the kind of peace and harmony that ADR can offer.

Jean Whyte is the ADR Program Development Coordinator

Announcements:

(Cont. from Page 5)

Montgomery County – Silver Spring

The District Court of Maryland for Montgomery County is pleased to announce the opening of its new Silver Spring courthouse. The courthouse opened Monday, August 23, 2004 and is located at 8552 Second Avenue Silver Spring, Maryland 20910 (on the corner of Cameron Street and Second Avenue). The new main number is (301) 563-8500. The ADR Office is proud that the Court has designated two rooms outside the Civil Clerk's Office for ADR sessions and the availability of other conference rooms when needed.

We look forward to seeing those of you who volunteer in Silver Spring at our new location.

CASTING CALL FOR ALL ADR VOLUNTEERS!!

By: Maureen Denihan

An "open call" for District Court ADR Volunteers will take place beginning September 8th, 2004. The Director, Alice Rentschler (Director of ADR Programs), alongside Talent Agent, Maureen Denihan (Coordinator of ADR Volunteers) will produce a breath-taking, heart pounding, ADR thriller of epic proportion for talent in eight districts around Maryland. Only those who've completed auditions, (existing volunteers and new volunteers who've completed an application, training, orientation and review), will be considered for the lead roles.

Volunteers will be asked to star in local pro-

ductions (Day-of-Trial ADR programs) from Westminster to Leonardtown. Scheduling for the program is completed quarterly and administered, in most districts, by the ADR Coordinator of Volunteers in the Annapolis office. Availability sign-up schedules to volunteer in October, November and December will be mailed to volunteers in the following districts and respective locations: Anne Arundel County (Annapolis and Glen Burnie), Baltimore City, Baltimore County (Catonsville and Towson), Calvert County, Carroll County, Charles County, Harford County, Howard County, and Montgomery County (Rockville and Silver Spring).

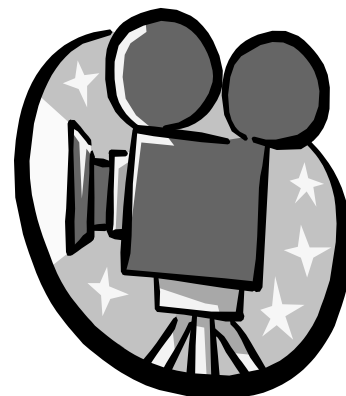
Volunteers should expect to receive an availability

sign-up schedule by September 8th. Availability sign-up schedules must be returned to the ADR Office for scheduling consideration on or before 11:00 a.m., Thursday, September 16th. Schedules will be completed on a first-come, first-served basis and final schedules will be mailed to volunteers on or before September 27th.

District Court ADR programs throughout the state have been thriving on the dedication and support of volunteers since the program's inception in 2000, and this quarter should be no exception. Thanks to those who have served our office in the past, and to those who will serve in the future.

Should you have any questions concerning scheduling in your district, inquire

about becoming a District Court ADR volunteer, or verifying your mailing address, phone and fax numbers against our roster,



please call the ADR Office at (410) 260-1676 or e-mail the Coordinator of ADR Volunteers, Maureen Denihan, at maureen.denihan@courts.state.md.us.

Maureen Denihan is the Coordinator of ADR Volunteers

ADR Office Restructured
(Cont. from Page 5)
additional settlement conference facilitation workshops and an ethics and agreement-writing workshop in multiple districts.

New ADR Judicial Committee

In October 2003, the Chief Judge of the District Court created a new District Court ADR committee. The committee is comprised of eight judges and two clerks and is staffed by members of the ADR Office. The committee is studying the use of ADR in the District Court, with a

plan to identify and promote best practices, educate the District Court bench and other court personnel about best practices, and to consider ADR policy decisions such as whether or not there should be rules governing ADR practice in the District Court. The committee convened its first meeting in February and met four times during this year.

ADR Office Continues to Work with MACRO

The District Court ADR Office is participating in the development of the Maryland Program for Mediator Excellence (MPME) with the Maryland

Mediation and Conflict Resolution Office (MACRO). The District Court is one of three ADR agencies participating in a pilot-mentoring program that may become part of the MPME. In addition, the ADR Office has a staff representative sitting on the definitions committee as well as the evaluation committee for MPME. The definitions committee hopes to clearly define the various methods of mediation practiced in Maryland so the MPME can apply equally to a variety of mediator styles. The evaluation committee is tasked with developing the tools and processes for MPME to determine the

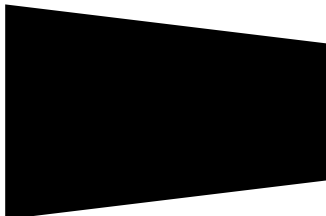
quality of a mediator's performance.

The District Court is thankful for the efforts of its volunteers and court personnel who help both volunteers and litigants on-site. The ADR Office will continue responding to training requests as well as feedback from litigants and volunteers who participate in our ADR programs. With the new staff members and the ADR committee in place, the District Court ADR Office hopes to serve the volunteers, the public, and the bench even more effectively than before.

News from the Alternative Dispute Resolution
Office of the District Court of Maryland

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Who are we?

Alice R. Rentschler, Esq.,
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Andrea Terry, Esq.,
*ADR Quality Assurance
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Development Coordinator*

Maureen Denihan, J.D.,
*Coordinator of ADR
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Carla Mamana,
ADR Liaison

Cindy Faucette,
Regional ADR Coordinator

Corrine Parker,
Administrative Assistant

To: Mailing Address Line 1
Mailing Address Line 2
Mailing Address Line 3
Mailing Address Line 4
Mailing Address Line 5

The District Court
ADR Office is
offering its
volunteers a three
hour:

**Ethics and
Agreement
Writing Work-
shop**

Join us for an interactive
and practical session.
Learn a protocol for han-
dling ethical dilemmas in
your ADR practice and
how to write good
agreements even in the
toughest cases. Training is
FREE-OF-CHARGE
and is available to current
volunteers. Attendees will
earn **3.25 Continuing
Education Credits (CE)**.

Pick a date and location from the listings below
and call the ADR Office at 410-260-1676 to
reserve a seat. Seating is limited.

**Ethics and Agreement Writing Workshop
Schedule**

September 28, 2004—9:00 a.m.—Noon
Silver Spring, MD

October 5, 2004—9:00 a.m.—Noon
Annapolis, MD

October 14, 2004—9:00 a.m.—Noon
Leonardtown, MD

October 21, 2004—12:30 p.m.—3:30 p.m.
Towson, MD

October 26, 2004—9:00 a.m.—Noon
Ellicott City, MD